

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1973.

— 615

AMERICAN SECURITY AND TRUST COMPANY, A
CORPORATION, APPELLANT,

vs.

BETTY G. PAYNE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 9, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1973.

AMERICAN SECURITY AND TRUST COMPANY, a Corporation,
Appellant,

vs.

BETTY G. PAYNE.

a Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1

Bill.

Filed April 18, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

Complainant states as follows:

(1) That she is a citizen of the United States and a resident of Washington, D. C., and brings this suit in her own right as one of the beneficiaries under the eighth clause of the hereinafter mentioned last will and testament of William H. Payne, deceased.

(2) That the defendant American Security and Trust Company is a corporation organized under the laws of the United States and

doing business in the District of Columbia and is sued herein as the trustee named in the said eighth clause of said will.

(3) That heretofore, to wit, on March 29, 1904, William H. Payne, late a citizen of the United States, and a resident of said District, departed this life at Washington, D. C., leaving a last will and testament dated the 28th day of January 1904, which said will and testament was by the Supreme Court of the District of Columbia holding a Probate Court, duly admitted to Probate and record on the 9th day of May, A. D. 1904. A copy of said last will and testament is herewith filed marked Exhibit "A" and made part hereof.

2 (4) That by the eighth clause of said last will and testament it is provided as follows:

"8th. In wills and codicils heretofore made I have separated the share of my son Arthur from the shares of the rest of my children for reasons adequate and satisfactory to me—The reasons still continue and I now bequeath to my son Arthur Morson Payne the sum of twenty six thousand dollars (\$26,000) for and during the joint lives of himself and his wife Bettie; and if my said son Arthur survive his said wife, then upon her death to him absolutely; and if his said wife survive him, then upon his death I give and bequeath the said legacy to the Company now having an office on G Street between 14th and 15th Streets N. W. in the City of Washington and known as "American Security and Trust Company" in and upon the following trusts and none other—that is to say, in trust to invest, reinvest and keep invested and pay over the income to my said daughter-in-law Bettie for the full term of her natural life, and my said beloved and honored daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren as she may elect; and in case she does not exercise this power, then from and after her death the said legacy shall go to and be distributed among my heirs; I should say my own next of kin."

(4a) That by the order admitting said will to probate and record, letters testamentary on said estate were granted to Leigh Robinson the Executor named in said will, and thereafter, to wit, on May 10, 1904, he duly qualified as such executor and letters testamentary were issued to him.

A question having arisen as to whether said executor should pay over to said Arthur Morson Payne the entire amount of the above mentioned legacy, and be thereby discharged, or should retain the same during the joint lives of said Arthur Morson Payne and complainant (who is the Bettie Payne, the wife of Arthur Morson Payne, mentioned in said paragraph), paying over to Arthur Morson Payne only the income derived therefrom, the said question was by heirs at law and next of kin of said testator carried to the

3 Court of said District.

(4b) By Petition filed August 16, 1905, the said executor asked to be instructed whether he should, pending said appeal, pay to said Arthur Morson Payne interest from and after May 10, 1905, (which date was one year after the issue of letters testamentary to

said executor) at six per cent. per annum on said \$26,000 bequest. On August 16, 1905, said Probate Court made the following order:

"Upon consideration of the petition of Leigh Robinson executor, filed herein, it is this 16th day of August, A. D. 1905, by the Court, ordered that said executor be and hereby is authorized and directed to pay to Arthur Morson Payne the income from the sum of Twenty-six Thousand Dollars (\$26,000) being as shown by the petition and accompanying letters at the rate of six per cent. per annum until further order of this Court."

Pursuant to the order last mentioned the said executor on or about September 1, 1905, paid said Arthur Morson Payne the sum of \$481 as interest on said \$26,000 at six per cent. per annum from May 10, 1905 to September 1, 1905.

(4c) That the Court of Appeals on December 5, 1905, decided (see 26 App. D. C. 283) that it was the duty of said Executor to retain in his hands the corpus so bequeathed, "during the life of the legatee's wife, investing it and paying over to him its income merely." Thereafter, to wit, on January 26, 1906, pursuant to the mandate of the Court of Appeals, filed December 26, 1905, this Court, holding a probate Court, Stafford J. sitting, decreed:

"That Leigh Robinson, Esq., the executor of the above-named testator be, and he hereby is, authorized and directed to retain in his hands, until the death of Arthur Morson Payne, or of his wife, Bettie Payne, which ever shall first occur, the legacy of \$26,000.00
4 given in and by the 8th item of the will of the said testator, investing the same from time to time as authorized and directed by the Court, and paying over the income therefrom to the said Arthur Morson Payne, and retaining the principal of the said legacy for the party entitled thereto, upon the death of the said Arthur Morson Payne, or of his said wife, whichever shall first occur, under the terms of the 8th item thereof."

(5) That on March 13, 1906, the said Executor filed in the Supreme Court of the District of Columbia holding a Probate Court, his petition for directions as to the investment of the aforesaid legacy, annexing to said petition a letter from Mr. Charles C. Glover, President of the Riggs National Bank, addressed to said Executor, which letter is as follows:

"WASHINGTON, D. C., *March 7, 1906.*

Leigh Robinson, Esq., Executor of Estate of Wm. H. Payne, deceased.

DEAR SIR: In answer to your verbal inquiry of this date, I beg to say that, Virginia Midland Railway Company's 3d Series 6% bonds, due 1916 could to-day be sold at about 113½, and at that price \$23000. of bonds would amount to \$26105.

Very truly yours,

CHAS. C. GLOVER, *President.*"

"I assent to the above valuation.

WM. A. MCKENNEY,

Trust Officer, American Security & Trust Co."

"MARCH 9, 1906.

There has been no change in the quotation for the above bonds, since the 1st of March 1906.

CHAS. C. GLOVER,
March 13, 1906."

(6) That on the same day said court decreed as follows:

5 "This cause coming on to be heard on the petition of Leigh Robinson, Executor of William H. Payne, deceased, this day filed; the letter of Charles C. Glover as to the value of the Virginia Midland bonds, retained for the purpose of this legacy and the letter of Arthur Morson Payne of March 10, 1906, in relation thereto, and the questions presented thereby having been fully considered by the Court, it is this 13th day of March, A. D. 1906, adjudged, ordered and decreed, that the said Leigh Robinson, Executor, be and is hereby authorized and directed to retain as of March 1, 1906, either 23 of said bonds, subject to repayment to the estate of \$105.00, or 22 of said bonds, leaving a surplus to be invested under the order of the Court; and in either case, applying to the purpose of the legacy the coupons for interest annexed to said bonds, and payable on the said 1st of March, 1906.

(7) That at the time of the passage of the last mentioned order the said Executor had in his hands twenty-three or more of the said Virginia Midland Railway Company's bonds and also had in his hands two or more \$500 6% bonds of the Charlottesville and Rapidan Railway; that all of said bonds had been owned by said testator in his lifetime and had been left by him at his death; that complainant is informed and believes and therefore avers, that the market value of said Virginia Midland Railway Company's bonds was at the rate of 113½ per cent. and that the market value of said Charlottesville and Rapidan Railway Company's bonds was at the rate of 101 per cent., the last mentioned bonds being well secured but subject to payment at any time.

(8) That upon the request and instructions of said Arthur Morson Payne, the said Executor, pursuant to the terms of said last mentioned order, retained as a part of the above mentioned \$26,000 legacy twenty-two of the said Virginia Midland Railway Company's bonds of the total market value at that time of \$24,970, and said Executor further retained as a part of said legacy two of the said bonds of the said Charlottesville and Rapidan Railway Com-
6 pany of the aggregate market value of \$1010; that the remaining \$20.00 of said \$26,000 legacy together with \$3.40 added by said Arthur Morson Payne out of his income were by said Executor invested in one bond of Washington Gaslight Company.

(9) That thereafter, on November 5, 1906, the second and final account of the said executor was by the said Supreme Court of the District of Columbia holding a Probate Court approved and passed; that said account contained the following under the heading, "Distributed and distributable in accordance with the provisions of the last will and testament of said Wm. H. Payne, deceased, as follows, to wit:

To Leigh Robinson, \$26,000 to be retained by him as authorized and directed in order of Court of Jan. 26, 1906, until the death of Arthur M. Payne or his wife, Bettie Payne, whichever shall first occur, in the income thereon to be paid to said Arthur M. Payne.

Under order of this Court of M'ch 13, 1906, said executor retained the following, viz:

22 shares Virginia Midland Railway Mortgage Bonds, 3rd series, due 1916 (appraised at 110½), at the market value on M'ch 13, 1906, which was 113½	\$24,970.00	
Appraised at.....		\$24,310.00
And 2-\$500 Charlottesville and Rapidan Bonds, market value at that date.	1,010.00	
Appraised at.....		1,070.00
Leaving \$20 still to be invested, this amount..	20.00	20.00
	<hr/>	
	26,000.00	
With \$3.40 being interest due Arthur Payne, was invested in the purchase of a gas bond..	3.40	3.40
	<hr/>	
	\$26,003.40	

A copy of said account is herewith filed marked Exhibit "B" and a copy of vouchers Nos. 94, 95, and 96 is also herewith filed marked Exhibit "C," both said Exhibits being made part hereof.

7 (10) That from March 13, 1906, until the death of said Arthur Morson Payne said executor collected the interest which fell due upon the bonds representing the investment of the \$26,000.00 made as hereinbefore stated and approved by the Court in said account, and said Executor regularly paid to said Arthur Morson Payne the interest as it accrued; thus "applying to the purpose of the legacy the coupons for interest, annexed to said bonds."

(11) That said Arthur Morson Payne departed this life at Waynesville, North Carolina, on October 9, A. D. 1907; that shortly thereafter the said Executor sought to settle his account as testamentary trustee under the said will and the said decree of January 26, 1906, but when the said Executor went to the office of the said American Security and Trust Company for the purpose of arranging for a transfer, to-wit, of the aforesaid legacy and of obtaining therefor the voucher of said Company, he was told by the President of said Company that he would only consent to receive the said trust estate and accept the said trust created by the 8th paragraph of testator's will, upon the understanding and condition that it was authorized and empowered to deduct the 13½ per cent., in effect, paid for the Virginia Midland Bonds, and the one per cent. in effect paid for the Charlottesville and Rapidan Bonds (in which with the approval of the court the said legacy is now invested) out of the income accruing to the beneficiary, in addition to the legitimate commissions which would be charged for the collection and payment of income arising from the investment.

8 (12) That thereupon the said Executor filed in the said Supreme Court of the District of Columbia holding a Probate Court, his petition setting forth substantially the facts stated in paragraphs 4 to 11 hereof, and praying that the said American Security and Trust Company be ordered to receipt for the said legacy as then invested and free from any claim on the part of said company to retain out of the income the amount of the premium at which said securities were taken, but subject, of course, to the right to deduct legitimate commissions for collection; that the remainder of said income after deducting such legitimate commissions be paid over to your complainant. Copy of said last mentioned petition is herewith filed marked Exhibit "D" and made part hereof."

(13) That thereafter the said American Security and Trust Company filed in said court an answer to said petition substantially admitting the averments of fact thereof and setting forth its reason for the position taken by it in respect of the proposed retention of a portion of the income on said bonds. A copy of said answer is herewith filed marked Exhibit "E" and made part hereof.

That thereupon the said Supreme Court of the District of Columbia holding a Probate Court (Mr. Justice Gould sitting) passed the following order:

9 "This cause coming on to be heard upon the petition of Leigh Robinson, Executor and testamentary trustee, for directions and instructions, as to the transfer of the bequest in trust for the lives of Arthur M. Payne, and Bettie, his wife, and the answer of the American Security & Trust Company thereto, and having been fully argued by counsel & considered by the Court: It is this 23d day of December, A. D. 1907, adjudged, ordered and decreed, that the said Leigh Robinson, Executor and Testamentary Trustee, is directed to turn over to said American Security & Trust Company, and said Security and Trust Company is directed to receipt for the said trust estate, as under the order of this Court it exists to-day, and is to-day invested: to wit for twenty two Virginia Midland Railway Mortgage \$1000. Bonds, 3d Series, due 1916; two \$500. Charlottesville & Rapidan Bonds, and one Gas Bond of the value of \$23.40; any question, hereafter arising as to the administration of the trust to be determined upon application to the Equity Court."

That on January 27, 1908, said Leigh Robinson as Executor and testamentary trustee, under the will of said Wm. H. Payne, filed a report and account of his dealings in respect of said bequest of \$26,000. A copy of said report and account is herewith filed marked Exhibit "F" and made part hereof.

(14) That on or about Jan. 9, 1908, the said executor did turn over to said American Security and Trust Company the said twenty-two Va. Mid. Ry. Co.'s Bonds and the said C. & R. Ry. Co.'s Bonds and the said gas bond, and received therefor from said Trust Company a receipt in the form prescribed by said decree of December 23, 1907, and that since then said Trust Co. has refused to pay over to your complainant the full amount of the interest accruing upon the

10 said bonds, but has insisted upon its proposal to make deductions from said interest in accordance with the position taken by it in the answer of which Exhibit "E" is a copy.

(15) Your complainant further shows that it was the intention of the said testator in and by the eighth clause of the said will to give your complainant, after the death of the said Arthur Morson Payne, every possible advantage and benefit to be derived from the legacy which during the life of said Arthur Morson Payne was held by said Executor for his benefit; that your complainant's welfare and advantage was the chief object of his bounty after the said Arthur Morson Payne should depart this life, and this is shown first, by the fact that during complainant's life testator (as decided by the Court of Appeals) withheld from said Arthur Morson Payne the control of said legacy but gave it to him absolutely in case your complainant should predecease him: and it is also shown by the fact that your complainant, in case she survived said Arthur Morson Payne, was given a power of appointment over the said legacy; that the investment in said bonds (except the gas bond, as to which there is no contest) was made by the said testator himself in his lifetime, and the setting apart of the same as the major part of the said legacy of \$26,000.00 was all accomplished under the direction and with the final approval of the said Probate Court, and that the said Court has also approved the said Executor's payment to the said Arthur Morson Payne during his lifetime of the interest which accrued upon said bonds prior to his death, thus placing upon the provisions of the will the exact construction which your complainant now contends for; that the said testator by giving said
11 legacy to Arthur Morson Payne absolutely in case complainant predeceased him (though restricting his control over said legacy during complainant's life) and further by providing that your complainant should if she survived her husband have the right by will to appoint said legacy to anyone of the complainant's children or grandchildren she might choose, showed conclusively that he was not moved by any solicitude for the interest of those who might take in remainder, but on the contrary showed his desire to benefit and protect your complainant and even to give her a certain dominion over said legacy; that, in view of the foregoing, the action of the defendant Trust Company in refusing to pay over to your complainant the full amount of the income arising from said bonds is contrary to the true intent and meaning of said will, and that your complainant is without remedy save through the intervention of this honorable court.

Prayers.

(1) That the American Security and Trust Company (a corporation) be served with process of this court and that it be required to answer the exigency of this bill.

(2) That the court will construe the will of the said William H. Payne, deceased, and especially the eighth clause thereof, and determine the rights of your complainant in respect to the income upon

said Virginia Midland Railway Company's Bonds and the Charlottesville and Rapidan Railway Company's Bonds or the income on the avails of said bonds in case they be paid.

(3) That the Court will instruct and direct the said
12 American Security and Trust Company, as trustee under the said eighth clause of said will, to pay over to your complainant the whole income received by it upon said bonds since the same have come into its hands as well as the whole income which may hereafter be received by it upon said bonds or the avails thereof.

(4) That the complainant may have such further and other relief as the nature of the case may require.

BETTY G. PAYNE.

FULTON LEWIS,
Solicitor for Complainant.

I so solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and that those on information and belief I believe to be true.

BETTY G. PAYNE.

Subscribed and sworn to before me a Notary Public this 13th day of April, A. D. 1908.

ISAAC M. BROOKE, [SEAL.]
Notary Public.

13

EXHIBIT A.

I

Last Will & Testament of William H. Payne.

1st. I William H. Payne of Virginia, but now residing & domiciled in the District of Columbia, do hereby revoke all former Wills & Codicils made by me, and do make & Publish this paper as my last will and testament—

2d. I hereby appoint my friend Leigh Robinson of Washington City sole *Executor* of this my last *will* & testament—I have absolute confidence in his judgements integrity & friendship—I hope therefore that the Court will permit him to qualify without security—If any is required I direct that it be furnished by some surety company, & that the charge for the same be paid by my estate—If my friend Leigh Robinson should predecease me, or from any cause fail to act as my *Executor*, I appoint my friend Major John W. Daniel as his successor, upon the same terms & with the same powers—I bequeath to my *Executor* the sum of forty five hundred dollars (\$4500.00) in lieu fees and commissions.

If my will is assailed, I wish my *Executor* to defend it & be paid for his services—As my estate consists of securities easily convertible, & I never or rarely owe more than current

WM. H. PAYNE
testator.

2

14 expenses I hope the provision made for administration will be satisfactory to my Executor

3rd. I give and bequeath the carriages & horse now in the possession of my wife to my wife Mary E. Payne, and also bequeath to her, the furniture, silver, glass, & china belonging to my household equipment, not disposed of by me in my lifetime, and may be in her possession at my death; except "my grandfathers clock," which I give to my son William Winter Payne, and except the Morson ladle given to me by my cousin Margaret Morson, which I direct to be restored to my said cousin Margaret, with my thanks for the gift & with my love for the donor—My chivalrous friend & fellow prisoner at Johnsons Island—Genl. James Archer, on his death-bed in 1865, sent to me as a gift the sash presented to him by ladies of Baltimore—After the close of the War I wrote to Genl. Archers brother, Mr Henry Archer, saying that highly as I prized this gift of a hero, it seemed to me proper to deliver it to one, who had from nature a closer claim—In his reply he insisted that the sash should be retained by me whilst I lived, but indicated a willingness appreciated and

WM. H. PAYNE

testator

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honoured by me, that his son should receive it after my death—I therefore direct my Executor to return this sash to the son of Mr Henry Archer, who is the namesake of General James Archer & if he be not living then to the eldest surviving son or decendant of

15 Mr Henry Archer—This sash is now in the possession though not ownership of my daughter Mrs Hunton—The silver buckle which is all *that is all* that is left of the silver spurs taken from me when I lay wounded on the battle field of Williamsburg, and which is now in the possession of my said daughter, I direct my Executor to give along with other memorials of my confederate career to the confederate museum in Richmond Virginia of which Mrs Joseph Bryan has been & I believe is now President.

4th. If my wife survive me I direct my Executor to invest the sum of ten thousand dollars (\$10,000), and pay the interest thereon to her order during her life, and upon and from and after her death, I direct that the said fund of ten thousand dollars shall be restored to my estate & distributed as provided by this will—The above provision for my wife is in lieu of any and all

WM H. PAYNE

testator

4

claim she may have against my estate—This sum with her private fortune will give her the income from an estate of forty thousand dollars—As the bulk of her private fortune was in effect settled on

her by me, at a time when under the Law I could — claimed it as my own I hope she will consider it a sufficient provision for her.

5th. I give and bequeath to my daughters in Law Laura wife of my son William Winter Payne—and Charlotte widow of my son John D. Payne the sum of one hundred dollars apiece—To my son William Winter Payne, in addition to what I give him by the
16 residuary clause of this will, I bequeath the sum of two thousand dollars (\$2000.00),—

To my son Winston, in addition to the provision made for him by said residuary clause, I bequeath the sum of one thousand dollars (\$1000.00). He deserves it for his high spirit & self-dependence—to my daughter in Law Elizabeth (commonly called Bettie) wife of my son Arthur Morson Payne I bequeath the sum of two hundred and fifty dollars (\$250.00), as a testimonial of my gratitude for her attention to me in sickness, & her services to me in business and trouble

WM H. PAYNE

testator

5

6th I give and bequeath to the servants mentioned in this clause if living at my death the following sums; to Dinah Jordan twenty dollars—To Aunt Bettie Jackson and to Fanny Johnson ten dollars each; To Mary Frazier two hundred dollars for her fidelity and attention to me—It is my will that these sums to servants be promptly paid—

7th In addition to the Legacy which I bought from my son John D. Payne and gave to his wife Charlotte, I give and bequeath to my said daughter-in-Law, Charlotte Mason Payne, the sum of eight thousand dollars (\$8000.00), confident that she will use it for the best interest of her self and of her son (& my grandson) Horatio Mason Payne—It is not my intention that my estate shall guarantee the title to the legacy from Johns grandmother bought and donated by me as aforesaid

8th In wills and codicils heretofore made I have separated
17 the share of my son Arthur from the shares of the rest of my children for reasons adequate and satisfactory to me—The reasons still continue and I now bequeath to my son Arthur Morson Payne the sum of twenty-six thousand dollars (\$26,000.)—for and during the joint lives of himself and his wife Bettie; and if my said son

WM H. PAYNE

testator—

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Arthur survive his said wife, then upon her death to him absolutely; and if his said wife survive him, then upon his death I give and bequeath the said legacy to the company now having an office on G street between 14th & 15th streets N. W. in the City of Washington and known as "American Security and trust Company" in and upon

the following trusts and none other—that is to say, in trust to invest, reinvest and keep invested and pay over the income to my said daughter-in-law Bettie for the full term of her natural life, and my said beloved and honoured daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren as she may elect; and in case she does not exercise this power, then from and after her death the said legacy shall go to & be distributed among my own heirs; I should say my own next of kin.

9th. All special legacies made and bequeathed to my daughters-in-law—Laura Charlotte—and Bettie, and a special legacy in the same clause to my son William (clause 5th) it is my will should be considered preferred legacies over other legacies in the order
18 *in the order* named in this clause—It is also my will that after the foregoing, the legacy bequeathed

WM H. PAYNE
testator

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to my son Arthur & his wife Bettie as directed & declared by the 8th clause of my will shall be paid as a preferred legacy—

10th If any child of mine asserts & establishes any claim against my estate I direct that the same shall be paid by and out of his interest in my estate as fixed by this will

11th. Owing no grave lot I have recently bought one in Warrenton Virginia, near the monument erected to my honoured comrades. I require my Executor, in whose hands & control I place the funeral and its ceremonies, to see that I am buried in the spot I have chosen, and that no flag but that of *Virginia* & the *battle flag* of the Confederacy is borne at the interment—I desire that some memorial of the part I took in the patriotic and heroic struggle made by a noble and gallant people shall be erected; and trust to my friend and Executor the selection of whatever is necessary to carry out my last wishes and express the love and devotion which I have felt for my people and their cause, and my sorrow for their defeat—I leave the cost entirely to his discretion—Also on 5th page third line from bottom I have changed \$28,000 into twenty six thousand dollars (\$26,000) before the signing and attesting of this Will

WM H. PAYNE
testator

19

8th

Residuary Fund and Clause.

12th After the payment of all charges and *and* legacies hereinbefore provided for, I give devise and bequeath to each of my sons viz William Winter Payne—Henry Fitzhugh Payne (by me called Harry) John Winston Payne and Charles Bland Payne an equal one fourth part of all the rest, residue and remainder of my property and estate personal real and mixed, including lapsed and void

legacies and devises (if any there be) and all after acquired property

13th I have made no provision for my daughter Mrs Virginia Hunton as she has some means of her own, expects more from her mothers and grandmothers estates, and is married and unencumbered

The interlineation of the word "people" on the 7th page and of the word "her" on 6th page twelfth line from bottom were both interlined by me before my subscription to this will and necessarily before the attestation of my witnesses—and the words "be retained" interlined on the second line from the bottom of the second page were also written by me before signing my name to this will—

In testimony of which I hereunto affix my signature and seal this 28th day of January in the year 1904 to the foregoing will—

WILLIAM H. PAYNE [SEAL.]
testator

20 Signed, published and declared by William H. Payne the above named testator, as and for his last will and testament in the presence of us, who in his presence, and in the presence of each other, and at his request have hereto set our hands as witnesses to the same on this 28th day of January, A. D. 1904.

BENJAMIN F. MINOR,
1706 Conn. Ave. N. W.

ROBT. W. HUNTER,
41 Corcoran Building—Law Office.
THOMAS SMITH

Virginia.

21

EXHIBIT B.

In the Supreme Court of the District of Columbia, Holding Probate Court.

No. 12117. Administration Docket 32.

Estate of WILLIAM H. PAYNE, Deceased.

Date of Death, M'ch 29, 1904.

Second & Final Account of Leigh Robinson, Executor.

(Letters issued May 10, 1904.)

	Assets received.	Disburse- ments.
This Accountant charges himself with the balance shown by his First Account approved and passed July 10, 1905, recorded in Liber Accounts No. 60, folio 478, consisting of—		
Notes appraised at	\$19,000.00	19,000.00
125 shares Capital Traction Co. stock appraised at 121½..	15,187.50	
1 share sold, proceeds of which is accounted for on page 2 of this account under "Cash received."		
Leaving 124 shares appraised at		15,066.00

	Assets received.	Disburse- ments.
Bonds, viz :		
20000 Va. 3 % funded bonds, appraised at.....	18,900.00	18,900.00
8000 Virginia Midland R. R. bonds appraised at 103¼....	8,260	
3000 of these bonds were sold for.....		3,075.00
Leaving 5000 of said bonds on hand at appraised value..		5,162.50
7000 Virginia Midland Ry. bonds appraised at.....	7,700.00	7,700.00
Cash.....	1,118.20	1,118.20
	<u>\$70,165.70</u>	

And with the following assets retained to meet the legacy of \$26000 to Arthur Payne, son of testatee, under decree of the Probate Court of Ap'l 14, 1905, viz :

23 \$1000 = \$23,000 Va. Midland Mortgage bonds, 3rd series, due 1916, appraised at 110½ = \$25,415.00

One of these bonds was turned over to J. Winston Payne at the market value.

Amount carried forward.....		<u>\$70,021.70</u>
22 Brought forward.....	\$70,021.70	

He handing executor \$125 to rectify the difference and is accounted for on page 2 of this account, under "Cash received."

Twenty three of said bonds on hand, appraised at.....	25,415.00	
11 \$500 = \$5500 Charlottesville & Rapidan Ry. Co. 1st Mortgage 6% bonds due in 1913, appraised at 107.....	\$5,885.00	
3 of these bonds were sold for.....	1,515.42	
Leaving 8 still on hand appraised at.....	4,280.00	

And with cash received :

1905.		
July 24.....	\$990.00	
1906.		
Jan. —.....	150.00	
Feb. 12.....	16.35	
M'ch 6.....	990.00	
" 24.....	125.00	
	<u>2,271.35</u>	
	<u>\$103,503.47</u>	

He claims credit and allowance for the following disbursements, to wit :

1905.			
June 13. J. J. Darlington, costs in Payne vs. Robinson.....	Vou. 89		73.18
Aug. 7. M. J. Falvey, granite and bronze monument, lettering, etc.....	" 90		645.00
Oct. 25. M. J. Falvey, further work done.....	" 91		65.00
1906.			
Jan. 15. The Washington Safe Deposit Co. of the District of Columbia, rent of safe deposit box	" 92		10.00
Register of Wills, final cost, including this account.....	" 93		38.05
			<u>831.23</u>
Balance forward			<u>102,672.24</u>
		<u>\$103,503.47</u>	<u>\$103,503.47</u>

23

Assets
received. Disburse-
ments.

Balance brought forward..... \$102,672.24

Distributed and distributable in accordance with the provisions of the last will and testament of said Wm. H. Payne, Deceased, as follows, to wit:

To Leigh Robinson, \$26,000. to be retained by him as authorized and directed in order of Court of Jan. 26, 1906, until the death of Arthur M. Payne or his wife, Bettie Payne, whichever shall first occur, the income thereon to be paid to said Arthur M. Payne.

Under order of this Court of Mch. 13, 1906, said executor retained the following, viz:

22 shares Virginia Midland Railway Mortgage bonds, 3rd series, due 1916, (appraised at 110½) at the market value on Mch. 13, 1906, which was 113½.....	\$24,970.00		
Appraised at.....			24,310.00
And 2-\$500. Charlottesville and Rapidan bonds, market value at that date.....	1,010.00		
Appraised at.....			1,070.00
Leaving \$20. still to be invested, this amount.....	20.00		20.00
	<u>26,000.00</u>		
With \$3.40	3.40		3.40
Being interest due Arthur Payne, was invested in the purchase of a gas bond.....	\$26,003.40		

To Arthur Payne, interest, viz:

1905.			
Sept. 1. Vou. 94.....	\$481.00		
1906.			
Mch. 15. " 95	585.00		
Apl. 2. " 96	101.60		
	<u>1,167.60</u>		1,167.60

To Mary E. Payne, interest, viz:

1905.			
Sept. 5. Vou. 97	\$300.00		
" 98	300.00		
	<u>600.00</u>		600.00

The rest and residue, \$75501.24, is distributable among 4 residuary legatees. Said rest and residue consists of

Notes appraised at.....	\$19,000.00
124 shares Capital Traction stock.....	15,066.00

Bonds, viz:

20,000 Va. Funded 3% bonds appraised at....	18,900.00
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Amounts carried forward.....	\$52,966.00
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		\$102,672.24	\$27,171.00
24 Brought forward.....	\$52,966.00	102,672.24	27,171.00
7000 Va. Midland R. R. bonds bonds appraised at 110.....	7,700.00		
\$5000 Va. Midland, 1st series, bonds, appraised at.....	5,162.50		
6-\$500. Charlottesville & Rapidan bonds, appraised at	3,210.00		
1 \$1,000 Va. Midland bond.....	1,105.00		
Cash.....	5,357.74		
	<u>\$75,501.24</u>		

Distributed and distributable as follows:

To Harry F. Payne, son,

	Assets received.	Disburse- ments.
1905.		
June 30. Cash, Vou. 99.....	\$300.00	
1906.		
Mch. 24. 2 Charlottesville & Rapidan R. R. bonds, appraised at 107, pt. Vou. 100.....	1,170.00	
Mch. 28. Cash, pt. Vou. 101.....	300.00	
No date. 5 Va. Funded Debt bonds each for \$1000. appraised at Vou. 102.....	4,725.00	
3 Va. Midland bonds each for \$1000 appraised at Vou. 102.....	3,097.50	
31 shares Capital Traction stock, par \$100. per share appraised at 121½ Vou. 102.....	3,766.50	
1 Atchinson Real Estate, Note, Vou. 102.....	2,000.00	
1 Clarke Real Estate Note.....	2,000.00	
1 Kidd Real Estate Note, Vou. 102.....	500.00	
Cash, " "	1,886.77	
		19,645.77
Amounts carried forward.....	\$102,672.24	\$46,816.77
25 Brought forward.....	102,672.24	46.816.77

To John Winston Payne, son, 5 Va. Funded Debt Bonds, each for \$1000, appraised at — Vou. 103..	\$4725.00	
2 \$1000 Va. Midland, 2nd series, appraised at 110 Vou. 103..	2200.00	
1 1000 Va. Midland, 1st series, appraised at 103½ Vou. 103..	1032.50	
31 shares Capital Traction stock par value \$100 per share, appraised at 121½ Vou. 103..	3766.50	
1 \$3500 Note of Oscar L. and T. J. Guthrie Vou. 103..	3500.00	
1 \$2000 Note of Julius I. Atchinson. Vou. 103..	2000.00	
1 \$1000 Va. Midland Bond..... Vou. 103..	1105.00	
Cash..... " " ..	229.58	
Cash..... " 101..	300.00	
		18,858.58

To C. Bland Payne, son, through his at-
torney, E. S. Turner:

1905.		
July 15. Cash..... Vou. 104..	\$300.00	
2 Charlottesville & Rapidan R. R. bonds, ap- praised at..... Vou. 104..	1070.00	
5 Va. Funded Debt bonds, each for \$1000 ap- praised at..... Vou. 104..	4725.00	
1 \$2000 Atchinson note..... Vou. 105..	2000.00	
3 \$1000 Va. Midland, 2nd series, appraised at..... Vou. 105..	3300.00	
31 shares Capital Traction stock appraised at..... Vou. 105..	3766.50	
Cash..... Vou. 105..	799.53	
		15,961.03
Amounts carried forward.....	\$102,672.24	\$81,636.38

		Assets received.	Disburse- ments.
26	Brought forward.....	102,672.24	81,636.38
	To Wm. W. Payne, son, cash..... Vou. 106..	\$300.00	
5	Va. Funded Debt bonds, each for \$1,000, ap- praised at	4725.00	
1	Va. Midland, 1st series, bond appraised at..... Vou. 107..	1032.50	
31	shares Capital Traction stock appraised at..... Vou. 107..	3766.50	
1	Atchinson note for..... Vou. 107..	2000.00	
1	Dodge note for..... " " ..	5000.00	
	Cash..... " " ..	904.12	
2	Charlottesville & Rapidan..... Vou. 107..	1070.00	
2	\$1000 Va. Midland 2nd series bonds, ap- praised at..... Vou. 107..	2200.00	
			20,998.12
	Balance of \$37.74 cash, is retained by Executor for ex- penses for which he will account for in the future.....		37.74
		<u>\$102,672.24</u>	<u>\$102,672.24</u>

We agree to the passage of this account, having each and all of us received our distributive share of the estate, with the exception of the \$37.74 retained by the Executor with our approval.

W. W. PAYNE.
HARRY F. PAYNE.
J. WINSTON PAYNE.

	Assets received.	Disburse- ments.
27	Brought forward.....	

The claim of Anne L. Green was disputed and now barred by limitations of 9 months.

DISTRICT OF COLUMBIA, *To wit:*

I, Leigh Robinson, Executor of the will of William H. Payne, late of the District of Columbia, deceased, do solemnly swear that the foregoing account is just and true, and that I have *bona fide* paid, or secured to be paid, the several sums for which I claim credit and allowance.

LEIGH ROBINSON.

Sworn to and subscribed before me this second day of November, A. D. 1906.

M. J. GRIFFITH,
*Deputy Register of Wills for the District of
of Columbia, Clerk of the Probate Court.*

In the Supreme Court of the District of Columbia, Holding a Probate Court.

On this 5th day of November, A. D. 1906, the foregoing account, being now presented for approval, the same is, after examination by the Court, approved and passed.

HARRY M. CLABAUGH,
Chief Justice.

28

EXHIBIT C.

Probate Receipt.

\$481.00

WASHINGTON, D. C., *Sept. 1st, 1905.*

Received of Leigh Robinson Executor of the Estate of William H. Payne Deceased, the sum of Four hundred & Eighty one Dollars being interest on \$26000 from May 10 to September 1st 1905

ARTHUR M. PAYNE,

Address, —

No. Voucher I

Probate Receipt.

\$585.00

WASHINGTON, D. C., *March 15, 1906.*

Received of Leigh Robinson, Executor of the Estate of William H. Payne Deceased, the sum of Five hundred and Eighty Five Dollars being the amount of Coupons, payable March 1st 1906, on twenty three Va. Midland bonds, less one hundred and five dollars (105.00) paid for bonds valued at \$26105.

ARTHUR MORSON PAYNE,

Address, 1773 Church St., N. W., Washington, D. C.

No. Voucher N

Probate Receipt.

\$101.60

WASHINGTON, D. C., *April 2d, 1906.*

Received of Leigh Robinson Executor of the Estate of Wm. H. Payne Deceased, the sum of One hundred and one 60/100 Dollars balance of \$105. due him for income—\$3.40 having been deducted for purchase of gas bond at \$23 40/100.

ARTHUR M. PAYNE,

Address, 1773 Church St. N. W.

No. —

29

EXHIBIT D.

In the Supreme Court of the District of Columbia, Holding a Probate Court.

Probate, No. 12117.

In re Estate of WILLIAM H. PAYNE, Deceased.

The petition of Leigh Robinson, Executor and testamentary trustee, respectfully presents:

That by the 8th clause of the last will and testament of said William H. Payne, it is provided; "I now bequeath to my son, Arthur Morson Payne, the sum of Twenty-six Thousand Dollars

(\$26,000.00) for and during the joint lives of himself and his wife, Bettie; and if my said son, Arthur, survives his said wife, then upon her death to him absolutely; and if his said wife survive him, then upon his death I give and bequeath the said legacy to the Company, now having an office on G Street, between 14th and 15th Streets, N. W., in the City of Washington, and known as "American Security and Trust Company," in and upon the following trusts and none others—that is to say, in trust to invest, re-invest, and keep invested and pay over the income to my said daughter-in-law, Bettie, for the full term of her natural life, and my said beloved and honored daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren as she may elect; and in case she does not exercise this power, then from and after her death, the said legacy shall go to and be distributed among my own heirs; I should say my own next of kin."

30 A question having arisen, as to whether the Executor named in the will should pay over the entire amount of this legacy to said Arthur Morson Payne, and be thereby discharged; or retain the same during the joint lives of the said Arthur M. Payne and your petitioner, paying over only the income derived therefrom, the same was carried to the Court of Appeals of said District; by which court on December 5, 1905, it was declared, that it was the duty of the Executor to retain in his hands, the corpus so bequeathed, "during the life of the legatee's wife, investing it and paying over to him its income merely." Thereafter, to wit, on January 26, 1906, pursuant to the mandate of the Court of Appeals, filed December 26, 1905, this Court, Stafford J. sitting Decreed: "That Leigh Robinson, Esq., be, and he hereby is, authorized and directed to retain in his hands until the death of Arthur Morson Payne, or of his wife, Bettie Payne, whichever shall first occur, the legacy of \$26,000.00 given in and by the 8th item of the will of the said testator, investing the same from time to time as authorized and directed by the Court and paying over the income therefrom to the said Arthur Morson Payne, and retaining the principal of the legacy for the party entitled thereto, upon the death of the said Arthur Morson Payne, or of said wife, whichever shall first occur under the terms of the 8th item thereof."

On March 13, 1906, the Executor filed his petition for directions as to investment of the aforesaid legacy, annexing thereto the following Exhibit C. C. G.

31

WASHINGTON, D. C., *March 7, 1906.*

Leigh Robinson, Esq., Executor Estate of Wm. H. Payne, deceased.

DEAR SIR: In answer to your verbal inquiry of this date, I beg to say, that Virginia Midland Railway Company's 3d series 6% bonds, due 1916 could to-day be sold at about 113½ and at that price \$23,000 of bonds would amount to \$26,105.

Very truly yours,

CHAS. C. GLOVER, *President.*

I assent to the above valuation.

WM. A. McKENNEY,
Trust Officer, American Security & Trust Co.

March 9, 1906.

There has been no change in the quotation for the above bonds since the 1st of March 1906.

CHAS. C. GLOVER, *March 13, 1906.*

On the same day this Honorable Court decreed as follows:

32 "This cause coming on to be heard on the petition of Leigh Robinson, Executor of William H. Payne, deceased, this day filed; the letter of Chas. C. Glover as to the value of the Virginia Midland bonds, retained for the purpose of this legacy, and the letter of Arthur Morson Payne of March 10, 1906 in relation thereto, and the questions presented thereby, having been fully considered by the Court, it is this 13th day of March, A. D. 1906, adjudged, ordered and decreed, that the said Leigh Robinson, Executor, be and hereby is authorized and directed to retain as of March 1, 1906, either 23 of said bonds, subject to re-payment to the estate of \$105.00, or 22 of said bonds, leaving a surplus to be invested under the order of the Court; and either case applying to the purpose of the legacy the coupons for interest, annexed to said bonds, and payable on said 1st of March, 1906."

That the said Arthur M. Payne exercised the choice accorded him, by instructing the Executor to retain twenty-two (22) Virginia Midland bonds, and Two (2) Charlottesville and Rapidan bonds \$500.00 each. These perfectly secured 6% bonds of the Charlottesville and Rapidan Railway could be bought at the low premium of one (1) per cent. only because the right was secured to the company to call these in at any time. There now remained \$20.00 of the said legacy to be invested. To this sum, the said Arthur M. Payne added out of his income, the sum of \$3.40 for the purchase of a gas bond at \$3.40. Thereafter, to wit; on June 1st 1906, your petitioner filed a statement for account, filing vouchers therewith. On December 25th, 1906, said account was stated—showing under the caption of "distributed and distributable in accordance with the provisions of the last will and testament of said William H. Payne, deceased, as follows, to wit:

To Leigh Robinson \$26,000.00 to be retained by him, as authorized and directed in order of Court of January 26, 1906, until the death of Arthur M. Payne or his wife, Bettie Payne, whichever shall first occur, the income thereon to be paid to said Arthur Payne.

33 Under order of this court of March 13, 1906, said Executor retained the following, viz:

22 Virginia Midland Railway Mortgage bonds, 3d series, due 1916, (appraised at $110\frac{1}{2}$) at the market value, on March 13, 1906, which was $113\frac{1}{2}$	\$24,970.00
And two (2) \$500 Charlottesville and Rapidan Bonds, market value at that date.....	1,010.00
Leaving \$20.00 still to be invested, this amount	20.00
	<hr/>
	\$26,000.00
With \$3.40 being interest due Arthur Payne, was invested in the purchase of a gas bond.....	3.40
	<hr/>
	26,003.40

This account was approved and passed by Chief Justice Clabaugh in the following terms, viz.:

"On this 5th day of November, A. D. 1906, the foregoing account being now presented for approval, the same is, after examination by the Court, approved and passed." Upon the investment of the \$26,000.00 so approved by the Court, as aforesaid, the said Leigh Robinson has regularly paid the interest as it accrued, by checks drawn to the order of the said Arthur M. Payne; that is to say, "applying to the purpose of the legacy the coupons for interest, annexed to said bonds."

Your petitioner further states that the said Arthur M. Payne departed this life at Waynesville, North Carolina, on the 9th day of October, A. D. 1907; and that at his earliest convenience thereafter, your petitioner sought to settle his account as testamentary trustee under the will and decree of Court; the most essential part whereof would have been the voucher for the transfer of the aforesaid
34 legacy to the American Security and Trust Company. But when your petitioner went to the office of said Trust Company, he was told by Chas. J. Bell, Esq. President of said American Security and Trust Company, that he would only consent to receive the said Trust Estate and accept the said trust created by the 8th paragraph of testator's will, upon the understanding and condition that it was authorized and empowered to deduct the $13\frac{1}{2}$ per cent. in effect, paid for the Virginia Midland bonds, and the one per cent. in effect paid for the Charlottesville and Rapidan Bonds (in which with the approval of the Court the said legacy is now invested) out of the income accruing to the beneficiary, in addition to the legitimate commissions which would be charged for the collection and payment of income arising from the investment.

Your petitioner respectfully represents, that such a construction of fiduciary duty would operate a great and uncalled for hardship upon the beneficiary; that it is a construction which derives no sanction from the will, or from the decree of this Court; that the said beneficiary is entitled to have said Trust Estate administered by a safe Trust Company, satisfactory to this court, which will be willing to receipt therefor, as it stands to-day invested, with the approval of this Court, without any deduction whatsoever from the income arising thereon, on account of the premium at which the securities

thereof were taken and retained; and which after first deducting legitimate commissions for the collection of the income, will pay over to the beneficiary the balance of income arising from said legacy, as now or hereafter invested. Your petitioner states, on information and belief, that if, under the order of this Court, the said American Security and Trust Company will not accept and administer the trust aforesaid, upon the terms herein stated, there are other trust companies in this District equally safe, which will, and, in such event, your petitioner would deem it his duty to apply to a Court of Equity for a decree which would provide for such administration of the trust. Wherefore your petitioner prays:

Prayer.

That the said American Security and Trust Company be ordered to receipt for said legacy, provided by the testator in the 8th clause of his will, as, with the approval of the Court, it is now invested, free from any claim on the part of said Company to retain for itself out of the income arising on the securities thereof the amount of premium, at which said securities were taken and subject to the right to deduct legitimate commissions for the collection of income arising from said legacy, as now or hereafter invested, upon the understanding and obligation to pay over the balance of income so arising to said beneficiary.

(Signed)

LEIGH ROBINSON,
Executor & Testamentary Trustee.

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

(Signed)

LEIGH ROBINSON.

36 Subscribed and sworn to before me this 17th day of December A. D. 1907.

(Signed)

M. J. GRIFFITH,
Deputy Register of Wills.

To American Security & Trust Company:

Take notice that I shall call up the above petition before Mr. Justice Gould in the Probate Court on Friday Dec. 20 at 10 A. M. or as soon thereafter as hearing can be had.

(Signed)

WM. A. McKENNY.

Dec. 17, '07.

In the Supreme Court of the District of Columbia, Holding a
Probate Court.

No. 12117.

In re Estate of WILLIAM H. PAYNE, Deceased.

Answer of the American Security and Trust Company.

And now comes the American Security and Trust Company and for answer to the petition of Leigh Robinson, executor and testamentary trustee, states as follows:

It admits the transactions and matters of record in said petition recited as occurring prior to and on the 9th day of October, 1907, on which day Arthur M. Payne is alleged to have departed this life.

It admits that the said petitioner subsequent to the 9th day of October, 1907, with a view of settling his account as testamentary trustee under the will and decree of court, consulted the President of the American Security and Trust Company, in regard to the transfer to the said Company of the trust fund of twenty-six thousand dollars, as provided for in clause 8 of the last will and testament of said William H. Payne.

38 It admits that its President when informed by the petitioner that the petitioner proposed to turn over as representing the said sum of twenty-six thousand dollars, certain bonds of the face or par value of twenty-three thousand and twenty dollars, though of the book value of twenty-six thousand three dollars and forty cents, informed the petitioner that it the said American Security and Trust Company could only accept the trust fund as thus invested on the distinct understanding that the income arising therefrom should be charged (in addition to its lawful commissions and expenses) with a sum at each income period sufficient at the maturity of the bonds to refund to the corpus of the trust the difference between *between* the face value of the investments and the book value thereof at which it was proposed that they should be taken over by it as trustee.

It admits that between the present date and March 1st, 1916, the date on which the Virginia Midland bonds mature, an amount equal to 13½% per the face value of the said bonds would have to be so reserved, in order that on the retirement of the said Virginia Midland bonds it should have in addition to the twenty-two thousand dollars which the successor of the Virginia Midland Company would then pay an additional sum of two thousand nine hundred and seventy dollars, to make up the twenty-four thousand nine hundred and seventy dollars of the capital of the trust alleged to be represented by this investment.

It alleges that an amount equal to 1% of the par value of the Charlottesville and Rapidan bonds would have to be reserved between

39 the present date and July 1st, 1913, the date at which they mature, in order that when the successor of that corporation pays the bonds, amounting to one thousand dollars, it should have an additional ten dollars on hand to represent the ten hundred and ten dollars now invested in these securities.

It denies that such a construction of its fiduciary duty would operate any hardship, either great or uncalled for, upon the beneficiary, or that this construction derives no sanction from the will or from the decree of the court.

It alleges that the construction contended for by the petitioner must inevitably reduce the corpus of the trust at the maturity of the present investments from twenty-six thousand to twenty-three thousand and twenty dollars ultimately to the great prejudice and loss of the reversioners, and also the loss and prejudice of the life beneficiary, should his life continue beyond the redemption period.

It alleges further; that after deducting the aforesaid reserves or sinking funds to protect the corpus of the trust, the net return in income would still approximate an average of 4% on the corpus, and would have averaged a little more had the petitioner injected this reasonable precaution in his administration of the trust.

It further alleges that 4% is not an unusual return from an investment in safe bonds, and that it is no hardship to the life tenant that the corpus of the estate should be invested at such a rate.

It admits that the beneficiaries are entitled to have the said trust estate administered by a safe Trust Company, satisfactory to this court, but it denies that this honorable court would approve
40 its receipting for said trust estate as it stands to-day invested, without providing for the preservation of the corpus of the fund by means similar to the said reserves out of the income from the fund.

It admits that there are other trust companies in the District of Columbia as safe as your respondent, but it denies that any safe trust company would undertake the administration of the trust without providing reasonable reserves from income to offset the otherwise inevitable depreciation of the corpus of the estate.

Your respondent respectfully submits that the prayer of the petition should be denied, and having answered fully this respondent prays to be hence dismissed with its reasonable costs on this behalf incurred.

AMERICAN SECURITY AND
TRUST COMPANY,

By ———, *President.*

DISTRICT OF COLUMBIA, ss:

I, Charles J. Bell, do solemnly swear that I have read the petition by — subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

Notary Public, D. C.

EXHIBIT F.

In the Supreme Court of the District of Columbia, Holding a Probate Court.

Probate, No. 12117. Adm. Doc., 32.

In re Estate of WILLIAM H. PAYNE, Deceased.

March 29, 1904.

Letters Issued May 10, 1904.

The report and account of Leigh Robinson, Executor and testamentary trustee, under the will of said decedent and testator, and under the decree of this Court, shows as follows:

As authorized and directed by order of Court of January 26th, 1906, the sum of Twenty-six Thousand Dollars (\$26,000.00) was retained by said testamentary trustee, until the death of Arthur M. Payne, (or his wife, Bettie Payne, whichever shall first occur) the income thereon to be paid to said Arthur M. Payne. Under further order of this Court of March 13th, 1906, said testamentary trustee—also the Executor under the will—retained the following, viz:

Twenty-two (22) Virginia Midland Railway Mortgage Bonds, 3d series, due 1916, at the market value on March 13th, 1906, of 113½	\$24,970.00
And 2 \$500 Charlottesville and Rapidan Bonds of the market value at said date of.....	1,010.00
Leaving \$20.00 still to be invested.....	20.00
	<hr/>
	\$26,000.00
	<hr/>
	\$26,000.00

This amount with \$3.40 of interest due said Arthur M. Payne was invested in the purchase of gas bond for \$23.40.....	3.40
	<hr/>
	\$26,003.40

The death of the legatee, Arthur M. Payne, on the 9th day of October, 1907, has rendered necessary this account.

In the second and final account of Leigh Robinson, Executor, approved and passed the 5th day of November, A. D. 1906, were included vouchers for the following payments of interest to said Arthur M. Payne, under prior decree of Court, viz :

Sept. 1, 1905—Voucher 94.....	\$481.00
March 15, 1906— “ 95.....	585.00
April 2nd, 1906— “ 96.....	101.60

The said Leigh Robinson, Trustee, as aforesaid, now files the following vouchers for payments of interest to said Arthur M. Payne, since the date last mentioned.

July	2, 1906—	Voucher A. (Sem. An. Int. on 2 C. & R. Bonds and one Gas Bond)...	\$30.60
Sept.	8, 1906—	“ B. (Sem. An. Int. on 22 Va. Mid. Bonds).....	660.00
Jan.	4, 1907—	“ C. (Sem. An. Int. on Gas Bond & 2 C. R. Bonds, less \$5.00 for safe deposit box).....	25.60
March	6, 1907—	“ D. (Sem. An. Int. on 22 Va. Mid. Bonds).....	660.00
July	10, 1907—	“ E. (Sem. An. Int. on 2 C. & R. Bonds & 1 Gas Bond).....	30.60
Sept.	2, 1907—	“ F. (Sem. An. Int. on 22 Va. Mid. Bonds)	660.00
43		“ G. Receipt of American Security and Trust Company (the trustee appointed by the will of the testator, to take upon the death of said Arthur M. Payne in the lifetime of his wife, Bettie Payne) for twenty-two (22) Virginia Midland Railway Mortgage Bonds, 3d series, due 1916; 2 C. & R. Bonds, each in the sum of \$500.00 and one Gas Bond purchased for \$23.40 as aforesaid; & 60 cents interest due.	

The said Executor and testamentary trustee asks that the aforesaid report and account be approved and passed.

LEIGH ROBINSON,
Executor & Testamentary Trustee.

I, Leigh Robinson being first duly sworn depose and say, that the matters stated herein, so far as they are matters of my personal knowledge are true, and so far as they are matters of information & belief, I believe them to be true.

LEIGH ROBINSON.

DISTRICT OF COLUMBIA, *To wit:*

I, Leigh Robinson, Executor and testamentary trustee of the estate of William H. Payne late of the District of Columbia deceased, do solemnly swear that the foregoing account is just and true, and that I have *bona fide* paid, or secured to be paid, the several sums for which I claim credit and allowance.

LEIGH ROBINSON,
Executor & Testamentary Trustee.

44 Sworn to and subscribed before me this 9th day of Jan.,
A. D. 1908.

WM. C. TAYLOR,
*Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.*

In the Supreme Court of the District of Columbia, Holding a
Probate Court.

On this 27th day of January, A. D. 1908, the foregoing account,
being now presented for approval, the same is, after examination by
the court, approved and passed.

ASHLEY M. GOULD, *Justice.*

45

Answer.

Filed May 7, 1908.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY, a Corporation.

The American Security and Trust Company, a corporation, for
answer to the Bill of Complaint herein exhibited, or so much thereof
as it is advised it is necessary and material for it to answer, answer-
ing says:

That it admits paragraphs one, two, three, four, four *a*, four *b*,
four *c*, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and
fourteen of the Bill of Complaint:

That answering paragraph fifteen of the said Bill of Complaint,
this defendant says it admits the transactions and matters of record
in said bill recited as occurring prior to the ninth day of October,
1907, upon which date Arthur M. Payne is alleged to have departed
this life.

Furthering answering: It admits that Leigh Robinson, the Attor-
ney for Betty G. Payne, consulted the President of the American
Security and Trust Company in regard to the transfer to the said
Company of the trust fund of Twenty Six Thousand Dollars,
46 as provided in the eighth clause of the last will and testament
of William H. Payne:

It admits that its President when informed by the Attorney for the
complainant that complainant proposed to turn over, as representing
the sum of Twenty Six Thousand Dollars, certain bonds of the face
or par value of Twenty Three Thousand and Twenty Dollars, though
of the book value of Twenty Six Thousand and Three Dollars and

Forty Cents, informed said Attorney for Betty G. Payne that said American Security and Trust Company would only accept the trust fund as thus invested, on the distinct understanding that the income arising therefrom should be charged (in addition to its lawful commissions and expenses) with a sum at each income period sufficient at the maturity of the fund to refund to the corpus of the trust the difference between the face value of the investments and the book value thereof, at which it was proposed they should be taken over by it as trustee.

It alleges that between the present date and March 1, 1906, the date upon which the Virginia Midland bonds mature, an amount equal to 13½ per cent. of the face value of said bonds would have to be so reserved, in order that on the retirement of the said Virginia Midland bonds it should have in addition to the Twenty Two Thousand Dollars which the successor of the Virginia Midland would then pay, an additional sum of Two Thousand Nine Hundred and Seventy Dollars to make up the Twenty Four Thousand Nine Hundred and Seventy Dollars of the capital of the trust alleged to be represented by this investment:

It alleges that an amount equal to one per cent. of the par value of the Charlottesville and Rapidan bonds would have
47 to be reserved between the present date and July 1, 1913, the date at which they mature, in order that when the successor of that corporation pays the bonds amounting to One Thousand Dollars, it should have an additional Ten Dollars on hand to represent the Ten Hundred and Ten Dollars now invested in these securities.

It denies that such construction of its fiduciary duty would operate any hardship, either great or uncalled for, upon the beneficiary, or that this construction derived no sanction from the will or from the decree of the Court.

It alleges that the construction contended for by the complainant must inevitably reduce the corpus of the trust at the maturity of its present investments from Twenty Six Thousand Dollars to Twenty Three Thousand and Twenty Dollars ultimately to the great prejudice and loss of the life beneficiary, should her life extend beyond the redemption period:

It alleges further that after deducting the aforesaid reserve or sinking fund to protect the corpus of the trust, the net return and income will still average four per cent. on the corpus:

It further alleges that four per cent. is not an unusual return from the investment in safe bonds, and that it is no hardship to the life tenant that the corpus of the estate should be invested at such a rate.

It admits that the beneficiaries are entitled to have said trust estate administered by a safe Trust Company satisfactory to the court, but
48 it denies that this honorable court would approve its receipting for said trust estate as it stands to-day invested, without providing for the preservation of the corpus of the fund by means similar to the said reserves out of the income from the fund.

It admits that there are other Trust Companies in the District of Columbia as safe as your respondent, but it denies that any Trust Company would undertake the administration of the trust without

providing reasonable reserves from the income to offset the inevitable depreciation of the corpus of the estate.

This defendant concurs in the second paragraph of the prayer of the Bill of Complaint "that the Court will construe the will of said William H. Payne, deceased, and especially the eighth clause thereof, and determine the right of the complainant in respect to the income upon said Virginia Midland Railway Company bonds, and the Charlottesville and Rapidan Company bonds, or the income on the avails of said bonds in case they are paid"; but this defendant submits that the third clause of the prayer in the Bill of Complaint should be denied.

And having answered fully this defendant prays to be hence dismissed with its reasonable costs on its behalf incurred.

AMERICAN SECURITY AND
TRUST COMPANY,
By CHARLES J. BELL, *President*.

WARD THORON,
WM. A. McKENNEY,
Solicitors for Defendant.

49 DISTRICT OF COLUMBIA, ss:

I, Charles J. Bell, being first duly sworn do solemnly swear that I have read the foregoing answer by me subscribed as such President; that I know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

CHARLES J. BELL.

Subscribed and sworn to before me, this 6th day of May, A. D. 1908.

HARRY W. FINNEY,
Notary Public, D. C. [SEAL.]

Replication.

Filed May 26, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

The plaintiff hereby joins issue with the defendant.

FULTON LEWIS,
Solicitor for Complainant.

50

Stipulation.

Filed May 27, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

Whereas the American Security and Trust Company a corporation organized under the laws of the United States and doing business in the District of Columbia, as Trustee under the last will and testament of William H. Payne deceased holds *inter alia* twenty-two (22) \$1000. 6% mortgage bonds, 3rd series, of the Virginia Midland Railway Company maturing 1916 and two (2) \$500. 6% bonds of the Charlottesville and Rapidan Railway Company, said bonds representing an aggregate investment of \$25,980. of the \$26,000. legacy set forth in the eighth clause of said last will and testament, said sum having been the market value of said bonds on the date when they were set apart by the executor of said William H. Payne as such part of said \$26,000. legacy; and

Whereas said American Security and Trust Company holds said bonds in trust to invest, re-invest and keep invested and pay over the income to said Betty G. Payne for the full term of her natural life and said Betty G. Payne was by said will and testament empowered to bequeath said legacy of \$26,000. to such of the testator's children or grandchildren as she might elect and in case she does not
51 exercise this power then from and after her death such legacy to go and be distributed among said testator's next of kind; and

Whereas said American Security and Trust Company contends that said Betty G. Payne is not entitled to the whole of the proceeds of the interest coupons on said bonds after deduction of its commission as trustee, but contends that a further deduction must be made from the proceeds of each coupon so that when said bonds mature and are paid there may be in the hands of said Trust Company an amount which together with the proceeds of the said bonds will aggregate \$25,980; and

Whereas said Betty G. Payne contends that she is entitled to the whole proceeds of each interest coupon as it matures subject only to the deduction of said Trust Company's reasonable trustee's commission and has brought the above entitled suit against said American Security and Trust Company for the purpose of securing a judicial decision as to which of said contentions is correct; and

Whereas said American Security and Trust Company has already tendered to said Betty G. Payne one or more remittances of proceeds

of such coupons after having made deductions from such proceeds in accordance with its said contention:

Now therefore it is stipulated and agreed between said Betty G. Payne and the said American Security and Trust Company that the acceptance and use by said Betty G. Payne of any remittances heretofore or hereafter made by said Company, of proceeds of interest coupons on said bonds, or any of them, shall not prejudice
 52 the right of said Betty G. Payne to make and insist upon her said contention as to the amount she should receive out of the proceeds of interest coupons on such bonds, whether heretofore accrued or hereafter accruing; and that pending the final settlement of said question by judicial decree of the said Supreme Court of the District of Columbia and any appellate court or courts to which said question may be taken upon appeal, the said Betty G. Payne shall have the right to receive and use, without prejudice to her right to maintain and insist upon her said contention, such portion of the proceeds of each interest coupon maturing upon said bonds as the said American Security and Trust Company may turn over to her after deducting the amounts which according to its contention should be deducted

Dated this 30th day of April, A. D. 1908.

AMERICAN SECURITY & TRUST CO.,
 C. J. BELL, *President*.

WM. A. MCKENNEY,

Sol'r for Def't, American Security & Trust Co.

FULTON LEWIS,

Sol'r for Compl't.

ELIZABETH R. WATKINS,

Witness as to Betty G. Payne.

BETTY G. PAYNE.

53

Decree.

Filed October 21, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

This cause came on to be heard at this term upon the bill of complaint, the answer, the replication, the stipulation filed May 27, 1908, and the waiver of right to take testimony, and was argued by counsel, and thereupon, upon consideration thereof, it is this 21st day of October 1908 ordered, adjudged and decreed as follows, to wit: that the American Security and Trust Company, trustee under the clause numbered 8th of the last will and testament of William H. Payne,

deceased, be and it is hereby instructed and ordered to turn over to complainant, Betty G. Payne, or her solicitor of record in this cause the several amounts over and above its reasonable commission for collection, which it has deducted from the proceeds of coupons for interest on the two (2) bonds of the Charlottesville and Rapidan Railway Company and the twenty-two (22) bonds of the Virginia Midland Railway Company held by said American Security and Trust Company as such trustee, and that henceforth said Company as such trustee shall collect the coupons for interest on each of said bonds when and as said coupons respectively fall due, and shall there-

54 upon at once turn over to said Betty G. Payne, or her assigns, the full proceeds of each coupon deducting only its legitimate commissions for collecting;

That whether the said American Security and Trust Company as such trustee retain said bonds until maturity, or whether it sell said bonds, or whether it sell part and retain part, the amount which it may receive as the proceeds thereof shall, after deducting any accrued interest, be deemed to be the principal which, by order of the Probate Court made December 23, 1907, was directed to be delivered to said American Security and Trust Company by the Executor of the last will and testament of William H. Payne, deceased; and that upon any investment or reinvestment thereof by said American Security & Trust Company the full income thereon shall be paid to complainant, less only the legitimate commission of the trustee for collecting.

It is further adjudged, ordered and decreed that the complainant recover costs against the said American Security and Trust Company to be taxed by the clerk, and that she have execution therefor as at law.

By the Court:

WRIGHT, *Justice*.

From the foregoing decree the defendant now here in open court notes an appeal to the Court of Appeals and prays the court to fix the amount of the bond for costs, which amount the court accordingly fixes at \$100.

55

Memorandum.

October 23, 1908.—Appeal bond approved and filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed November 27, 1908.

In the Supreme Court of the District of Columbia, the 27th Day of November, 1908.

Equity. No. 27742.

PAYNE

vs.

AMERICAN SECURITY & TRUST Co.

The Clerk of said Court will please include in the record the bill, answer, & stipulation, replication & decree.

WM. A. McKENNEY,
Attorney for Def't.

56 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 55 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 27742 Equity, wherein Betty G. Payne is Complainant and American Security and Trust Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of December, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1973. American Security and Trust Company, a corporation, appellant, *vs.* Betty G. Payne. Court of Appeals, District of Columbia. Filed Dec. 9, 1908. Henry W. Hodges, clerk.

ADDITION TO RECORD PER STIPULATION OF
COUNSEL.

Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1973.

AMERICAN SECURITY AND TRUST COMPANY, A COR-
PORATION, APPELLANT,

vs.

BETTY G. PAYNE.

FILED JANUARY 4, 1909.

In the Court of Appeals of the District of Columbia.

No. 1973.

AMERICAN SECURITY AND TRUST CO., a Corporation, Appellant,

vs.

BETTY G. PAYNE.

It is hereby stipulated by and between the appellant and the appellee that the transcript of additional portions of the record in Equity Cause No. 27742, Supreme Court of the District of Columbia, to wit, of the waiver of right to take testimony and the order to calendar the cause for hearing, shall be filed in this court and shall become a part of the record upon this appeal.

AMERICAN SECURITY & TRUST CO.,
By WM. A. MCKENNEY, *Att'y & Tr. Officer*,
By WARD THORON,
Attorneys.

BETTIE G. PAYNE,
By FULTON LEWIS, *Attorney.*

Waiver of Right to Take Testimony by Complainant and Defendant.

Filed May 27, 1908.

In the Supreme Court of the District of Columbia.

Equity. No. 27742.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY (a Corporation).

W. A. McKenney, Esq., Solicitor for Defendant in above entitled cause:

Please take notice that I desire to take no evidence in support of the allegations of the Bill of Complaint in above entitled cause but for proof thereof will rely upon the admissions of the Defendant in its answer. Please signify below whether you desire to take testimony or file any evidence on behalf of the Defendant and if so how much time you desire in which to take and file the same.

FULTON LEWIS,

Solicitor for Complainant.

I do not desire to take or file any testimony or evidence on behalf of Defendant in above entitled cause and I desire no time within which to take and file the same.

WM. A. McKENNEY,

Solicitor for Defendant.

Order to Calendar for Hearing.

Filed May 27, 1908.

In the Supreme Court of the District of Columbia, the 27th Day of May, 1908.

Equity. No. 27742, Docket No. —.

BETTY G. PAYNE

vs.

AMERICAN SECURITY AND TRUST COMPANY.

The Clerk of said Court will calendar the above entitled cause for hearing at the June term 1908 upon the bill of complaint, the answer, the replication, the stipulation filed May 27, 1908, and the waiver of right to take testimony filed the same day.

FULTON LEWIS,

Solicitor for Complainant.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify the foregoing to be true copies of the waiver of right to take testimony and the order to calendar the cause for hearing, referred to in the annexed stipulation, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my *my* name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of December, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1972. American Security and Trust Co., &c., appellant, *vs.* Betty G. Payne. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Jan. 4, 1909. Henry W. Hodges, Clerk.

COURT OF APPEALS,
DISTRICT OF COLUMBIA
FILED

JAN 5-1909

*Henry W. Rodgers,
Clerk.*

IN THE

Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 19,073.

AMERICAN SECURITY AND TRUST COMPANY,
A CORPORATION, APPELLANT,

vs.

BETTY G. PAYNE, APPELLEE.

BRIEF FOR THE APPELLANT.

WARD THORON

WM. A. MCKENNEY

For Appellants.

IN THE
Court of Appeals, District of Columbia.

JANUARY TERM, 1909.

No. 19,073.

AMERICAN SECURITY AND TRUST COMPANY,
A CORPORATION, APPELLANT,

vs.

BETTY G. PAYNE, APPELLEE.

BRIEF FOR THE APPELLANT.

STATEMENT.

This is an appeal from a decree of the Supreme Court of the District of Columbia sitting in equity.

The appellee, the complainant below, filed her bill for the construction of the eighth clause of the will of William H. Payne, and for instruction and direction to the testamentary trustee of the fund therein created as to its administration.

The testamentary provision creating the trust was in the following language:

“In wills and codicils heretofore made, I have separated the share of my son Arthur from the shares

of the rest of my children for reasons adequate and satisfactory to me. The reasons still continue and I now bequeath to my son Arthur Morson Payne the sum of twenty-six thousand dollars (\$26,000)—for and during the joint lives of himself and his wife Bettie; and if my said son Arthur survive his said wife, then, upon her death, to him absolutely; and if his said wife survive him, then, upon his death, I give and bequeath the said legacy to the company now having an office on G street between 14th & 15th streets N. W. in the city of Washington and known as 'American Security and Trust Company' in and upon the following trusts and none other—that is to say, in trust to invest, reinvest and keep invested and pay over the income to my said daughter-in-law Bettie for the full term of her natural life, and my said beloved and honoured daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren, as she may elect; and in case she does not exercise this power, then from and after her death the said legacy shall go to & be distributed among my own heirs; I should say my own next of kin."

During the life of the legatee, Arthur Morson Payne, the executor acted as testamentary trustee and invested the fund in 6 per cent. bonds, maturing July 1, 1913, and March 1, 1916, in the purchase of which a premium of \$2,980 was paid out of the corpus of the estate. The executor from time to time distributed to the legatee the full proceeds of the maturing coupons, without reserving therefrom semi-annually such sums as would, at the maturity of the bonds, restore to the fund what was taken from it for the payment of the premium.

On the death of Arthur Morson Payne the fund, as then invested, was, in accordance with the provisions of the will, turned over to the American Security and Trust Company as trustee. In administering the fund the Trust Company as trustee, in addition to its lawful commissions and expenses, has deducted from the proceeds of maturing coupons such sums as would in due course, at the several maturities of the

the complainant the full proceeds of each coupon on each of said bonds, deducting only its legitimate commissions for collecting.

IV.

In decreeing that upon any investment or reinvestment of the corpus of said trust fund the said company, trustee, shall pay to the complainant the full income thereon, less only the legitimate commission of the trustee for collecting.

ARGUMENT.

Whether the life tenant is entitled to all the interest, after deducting expenses, on bonds bought by a trustee when worth more than par, is the question at issue.

In the case at bar, the court below decided this question in the affirmative, and it seems proper to premise this argument by an examination of the consequences which will result if this decision is affirmed.

The testator bequeathed a specific sum of twenty-six thousand dollars in trust, which was first administered by the executor during the life of the first beneficiary, and since his death by the appellant, the appellee being the present life tenant. The executor, acting as testamentary trustee, invested the fund in March, 1906, by the purchase of twenty-two 6 per cent. bonds of the Virginia Midland Railroad Company, of the par value of one thousand dollars each, maturing March 1, 1916, for which he paid a premium of 13½ per cent., or an aggregate of two thousand nine hundred and seventy dollars more than their face value or of the sum receivable from them at their maturity. He also purchased two 6 per cent. bonds of the Charlottesville & Rapidan Railroad Company, of the par value of five hundred dollars each, maturing, if not sooner called, July 1, 1913, for which he paid a premium of 1 per cent., or an aggregate of ten dollars more than their face value or of the sum receivable from

of the rest of my children for reasons adequate and satisfactory to me. The reasons still continue and I now bequeath to my son Arthur Morson Payne the sum of twenty-six thousand dollars (\$26,000)—for and during the joint lives of himself and his wife Bettie; and if my said son Arthur survive his said wife, then, upon her death, to him absolutely; and if his said wife survive him, then, upon his death, I give and bequeath the said legacy to the company now having an office on G street between 14th & 15th streets N. W. in the city of Washington and known as 'American Security and Trust Company' in and upon the following trusts and none other—that is to say, in trust to invest, reinvest and keep invested and pay over the income to my said daughter-in-law Bettie for the full term of her natural life, and my said beloved and honoured daughter-in-law is hereby empowered to bequeath said legacy to such of my children or grandchildren, as she may elect; and in case she does not exercise this power, then from and after her death the said legacy shall go to & be distributed among my own heirs; I should say my own next of kin."

During the life of the legatee, Arthur Morson Payne, the executor acted as testamentary trustee and invested the fund in 6 per cent. bonds, maturing July 1, 1913, and March 1, 1916, in the purchase of which a premium of \$2,980 was paid out of the corpus of the estate. The executor from time to time distributed to the legatee the full proceeds of the maturing coupons, without reserving therefrom semi-annually such sums as would, at the maturity of the bonds, restore to the fund what was taken from it for the payment of the premium.

On the death of Arthur Morson Payne the fund, as then invested, was, in accordance with the provisions of the will, turned over to the American Security and Trust Company as trustee. In administering the fund the Trust Company as trustee, in addition to its lawful commissions and expenses, has deducted from the proceeds of maturing coupons such sums as would in due course, at the several maturities of the

bonds, restore to the corpus of the trust fund the amount advanced from it for the payment of the premium on the bonds at the time they were purchased.

Betty G. Payne, the present life beneficiary in the trust fund, claiming to be entitled to the proceeds of the coupons without deduction, filed the bill of complaint, praying that her rights in respect to the income from the investments in the trust fund be determined and that the Trust Company, as trustee, be directed to pay over to her "the whole income received by it upon said bonds since the same have come into its hands, as well as the whole income which may hereafter be received by it upon said bonds or the avails thereof."

The decree below was entered October 21, 1908, in favor of the complainant, substantially granting her prayer.

From this decree the appellant, the defendant below, appeals.

ASSIGNMENT OF ERRORS.

The court below erred:

I.

In not denying the third prayer of the bill of complaint.

II.

In decreeing that the appellant, the American Security and Trust Company, trustee, should turn over to the complainant the several amounts over and above its reasonable commission which it had deducted from the proceeds of coupons for interest on the two bonds of the Charlottesville & Rapidan Railway Company and the twenty-two bonds of the Virginia Midland Railway Company held by it as trustee.

III.

In decreeing that thereafter the said company, as such trustee, shall, upon collection thereof, at once turn over to

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Section